

117307

DECISION



20568
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204602.2

DATE: January 19, 1982

MATTER OF: Media Works, Inc.

DIGEST:

1. Protest based on contracting agency's failure to conduct debriefing is academic when agency indicates that one will be given after award if protester files written request.
2. GAO will not reevaluate proposals, but rather limits review to examination of whether evaluation is reasonable and in accord with listed criteria. GAO will not substitute its judgment for contracting agency's unless protester shows abuse of discretion or violation of procurement statutes or regulations.
3. While discussions generally are held with all offerors whose proposals are either technically acceptable or capable of being made acceptable, even technically acceptable proposal may be eliminated from competitive range if there is no reasonable chance it will be selected.

The Media Works, Inc. protests rejection of its proposal for design and development of two correspondence courses for the Army Quartermaster School at Fort Lee, Virginia. The firm was one of six responding to solicitation No. DABT60-81-R-0015, issued by the Training Support Center, Fort Eustis, Virginia, on June 8, 1981. We deny the protest.

Initially, Media Works protested its elimination from competition during the course of a cost audit. It also objected to the Army's failure to conduct a debriefing. Upon receipt of the administrative report, the firm further protested the Army's finding that its proposal was technically unacceptable, since the report states that other proposals were "susceptible" to being made acceptable. Media Works argues that negotiations should have been conducted with all six offerors, since none of their initial proposals were technically acceptable.

In addition, Media Works believes that its full technical proposal may not have been evaluated, since only extracts from its sample subcourse (defined in the solicitation as a module which teaches a single task or a group of close-related tasks) were duplicated in the administrative report. Media Works also alleges that the Army's decision to conduct audits before completion of technical evaluations unduly burdened offerors and was evidence of poor management. Finally, the firm questions the contracting officer's determination that it was urgent to award the contract notwithstanding the protest.

At the outset, although an urgency determination is included in the file, the Army states that no award has yet been made. In addition, because of the pre-award status of this protest and the proprietary nature of competing proposals, certain portions of the record have not been released to Media Works. Although we have reviewed the full administrative report, due to these restrictions our discussion is necessarily limited. See Texstar Plastics Company, Inc., B-201105, September 18, 1981, 81-2 CPD 223.

With regard to the audit question raised by Media Works, the Army states that it decided to conduct audits at the same time that it was making technical evaluations in an attempt to utilize funds appropriated for fiscal 1981. The Army states, however, that its audit of Media Works was totally independent of its finding of technical unacceptability and in no way jeopardized the firm's chance for award. As for a debriefing, the Army states that Media Works has not requested one. We believe the Army has satisfactorily explained the timing of the audits and find that the protest regarding the debriefing is academic, since the Army indicates that Media Works will be given one following award if it files a written request.

We believe that the crux of Media Works' protest is the Army's finding of technical unacceptability. As we have often stated, it is not the function of our Office to reevaluate proposals when an evaluation is challenged. Rather, we limit our review to an examination of whether the evaluation was reasonable and in accord with listed criteria. We will not substitute our judgment for that of a contracting agency unless the protester shows that there has been an abuse of discretion or a violation of procurement statutes or regulations. Quest Research Corporation, B-203167, December 10, 1981, 81-2 CPD ____. We find neither here.

In this respect, Media Works' proposal received only 42.92 points during evaluation, the lowest score given. The Army determined that this proposal and the next lowest-ranked one had no reasonable chance for award, and consequently it did not include them in the competitive range. The proposal of Northrop Services, Inc. received the highest score, 72.65 points, and also was lowest-priced. Although evaluators agreed that the three remaining proposals could be revised to make them acceptable, according to the Army this would only have further increased their proposed costs. The Army therefore negotiated only with Northrop and plans to award a contract to that firm.

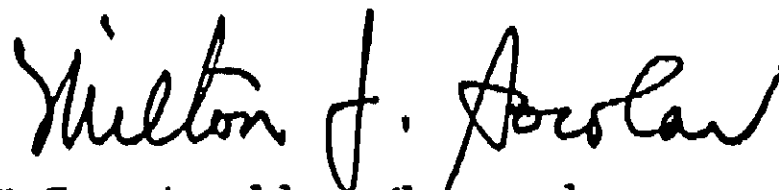
We find that the evaluators fully considered each proposal in view of each of the listed criteria. These included offerors' technical approaches and required sample subcourses on how to fill out a materiel readiness report. Also considered were offerors' ability to complete the contract on time, corporate experience and qualifications of proposed personnel, and use and quality of graphics. Using an extremely detailed checklist, each evaluator rated each offeror as outstanding, good, acceptable, or nonresponsive with regard to numerous subcriteria under these general headings.

For example, in assessing sample subcourses, evaluators were asked to determine the degree to which each proposed module met or incorporated 32 different objectives or items. In the case of Media Works, the pre-test and post-test which the protester believed might not have been evaluated were included but were consistently rated nonresponsive. We conclude that the Army's finding that Media Works' subcourse would need major reworking to meet requirements was reasonable and was made after examination of Media Works' entire proposal. Moreover, since according to the solicitation the Army intended to retain the successful contractor's sample subcourse as a measure for those submitted during performance, we believe Media Works reasonably was eliminated from the competitive range on the basis of weaknesses and deficiencies in this area.

As for other offerors, as a general rule discussions are held with all whose proposals are either technically acceptable or capable of being made acceptable, and thus have a reasonable chance of award. See Defense Acquisition Regulation § 3-805 (1976 ed.). However, even a technically acceptable proposal may be eliminated from the competitive range if there is no reasonable chance that it will be

selected. Hittman Associates, Inc., B-198319, December 17, 1980, 80-2 CPD 437. When, as here, in the contracting agency's judgment meaningful discussions cannot be held with more than one offeror, we have considered that selection to be within the agency's discretion. Id., citing Art Anderson Associates, B-193054, January 29, 1980, 80-1 CPD 77. We do not believe the Army abused its discretion in negotiating only with Northrop when the next-best offeror whose proposal was deemed capable of being made acceptable was initially rated more than 10 points lower and was priced more than \$170,000 higher. Thus, Media Works' protest on this basis is without legal merit.

The protest is denied.



Acting Comptroller General
of the United States